

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
ALBANY DIVISION**

DAVID PAUL BAKER,

Plaintiff,

v.

JAMES DONALD, *et al.*,

Defendants.

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1:08-CV-14 (WLS)

**ORDER**

Before the Court is a Report and Recommendation from United States Magistrate Richard L. Hodge filed on February 3, 2009. (Doc. 40). It is recommended that Defendants' Motion to Dismiss (Doc. 22) be granted. *Id.* Plaintiff filed a timely objection to the Report and Recommendation on February 19, 2009. (Doc. 42).

In the Recommendation, it was found that Plaintiff failed to exhaust his administrative remedies, as he did not fully participate in the available grievance procedure at Autry State Prison. Specifically, Judge Hodge found that Plaintiff failed to file a timely grievance consistent with the policies at Autry. Additionally, despite Plaintiff's claim that he was unable to file a timely grievance because he was in medical segregation, Judge Hodge found that Plaintiff failed to file an out-of-time grievance until 25 days after he was released back into general population.

In his objection, Plaintiff essentially recaptures the arguments he made before Judge Hodge. The gist of these arguments is that because there is no policy specifying the time frame in which an out-of-time grievance must be filed, it cannot be said that he did not comply with the policies and procedures concerning the same. What Plaintiff misses is that his out-of-time grievance was not denied merely because it was filed beyond a certain number of days after the original deadline. Instead, Autry's grievance procedure provides that an out-of-time grievance may be filed and the same may be accepted by the Unit Manager at Autry upon good cause shown. Here, Plaintiff's out-of-time grievance was rejected because he failed to make the requisite good cause showing. Plaintiff even failed to proffer compelling arguments to Judge Hodge as well for his 25 day delay. Beside Plaintiff's out-of-time grievance, filed without a showing of good cause, Plaintiff also failed to file

a formal grievance or appeal the denial of his previous grievance. The record before the Court makes clear that Plaintiff did not apprise himself of the available grievance procedures at Autry, and therefore failed to exhaust his administrative remedies.

Therefore, upon full review and consideration upon the record, the Court finds that said Report and Recommendation (Doc. 40) should be, and hereby is, **ACCEPTED, ADOPTED** and made the Order of this Court for reason of the findings made and reasons stated therein, together with the findings made, reasons stated and conclusions reached herein. Accordingly, Defendant's Motion for Summary Judgment (Doc. 22) is **GRANTED**.

**SO ORDERED**, this 31<sup>st</sup> day of March, 2009.

/s/W. Louis Sands  
**THE HONORABLE W. LOUIS SANDS,**  
**UNITED STATES DISTRICT COURT**